

STATE OF SOUTH CAROLINA

(Caption of Case)
In the Matter of

Application of Duke energy Carolinas, LLC for
Approval of decision to Incur
Nuclear Generation Pre-Construction Costs

194017
BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 440 - E

(Please type or print)

Submitted by: Robert Guild

SC Bar Number: 2358

Address: 314 Pall Mall St.

Telephone: 803 252 1419

Columbia, SC 29201

Fax: 803 252 1419

Other: _____

Email: bguild@mindspring.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: **FRIENDS OF THE EARTH MOTION TO RESCIND OR AMEND ORDER
NO. 2008-417**

| INDUSTRY (Check one) | NATURE OF ACTION (Check all that apply) | | |
|--|--|--|--|
| <input checked="" type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certificatio |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input checked="" type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

ROBERT GUILD

Attorney at Law

314 Pall Mall • Columbia, South Carolina 29201 • 803-252-1419

July 24, 2008

Mr. Charles Terreni
Chief Clerk
Public Service Commission of South Carolina
Synergy business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

RECEIVED
2008 JUL 24 AM 9:20
SC PUBLIC SERVICE
COMMISSION

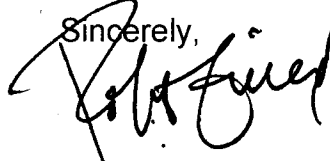
Re: Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur
Nuclear Generation Pre-Construction Costs
Docket No. 2007-440-E

Dear Mr. Terreni:

Enclosed please find for filing and consideration the Friends of the Earth Motion to Rescind or Amend Order No. 2008-417, together with Certificate of Service reflecting service upon all parties of record.

With kind regards I am

Sincerely,



Robert Guild

Encls
CC: All counsel

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-440-E

RECEIVED
2008 JUL 24 PM 9:20
SC PUBLIC SERVICE
COMMISSION

In the Matter of)

Application of Duke Energy Carolinas, LLC)
for Approval of Decision to Incur Nuclear)
Generation Pre-Construction Costs)
)

Certificate of Service

I hereby certify that on this date I served the above **FRIENDS OF THE EARTH
MOTION TO RESCIND OR AMEND ORDER NO. 2008-417** by placing copies of same
in the United States Mail, first-class postage prepaid, addressed to:

Kodwo Gharthey-Tagoe
VP Legal, State Regulation
Duke Energy Carolinas, LLC
Post Office Box 1006/EC03T
Charlotte, NC, 28201-1006

Scott Elliott , Counsel
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC, 29205

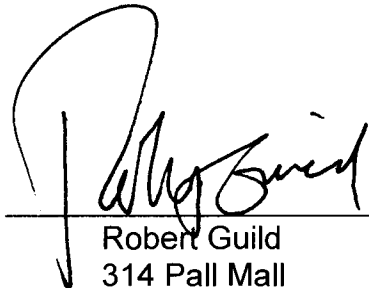
C. Lessie Hammonds , Counsel
Office of Regulatory Staff
Post Office Box 11263
Columbia , SC, 29211

Nanette S. Edwards , Counsel
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC, 29211

Bonnie D. Shealy , Counsel
Robinson, McFadden & Moore, P.C.
Post Office Box 944 Columbia, SC, 29202

Frank R. Ellerbe III , Counselor
Robinson, McFadden & Moore, P.C.
P.O. Box 944
Columbia, SC, 29202

M. John Bowen, Jr., Esquire
McNair Law Firm
Post Office box 11390
Columbia, SC 29211



Robert Guild
314 Pall Mall
Columbia, South Carolina 29201
(803) 252 1419
ATTORNEY FOR
FRIENDS OF THE EARTH

July 23, 2008

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-440-E

RECEIVED
2008 JUL 24 AM 9:20
PUBLIC SERVICE
COMMISSION

In the Matter of)

Application of Duke Energy Carolinas, LLC)
for Approval of Decision to Incur Nuclear)
Generation Pre-Construction Costs)

**FRIENDS OF THE EARTH MOTION
TO RESCIND OR AMEND ORDER
NO. 2008-417**

Friends of the Earth ("FOE"), Intervenor in the above-referenced proceeding, on behalf of its members who are Duke customers, stockholders and neighbors of the proposed William States Lee, III Nuclear Station in Cherokee County, hereby moves, pursuant to S.C. Code Ann. Section 58-27-2130, to rescind or amend Commission Order No. 2008-417, "Approving Application of Duke Energy Carolinas' Decision to Incur Nuclear Generation Pre-Construction Costs, dated June 9, 2008. This Motion to Rescind or Amend is based on the grounds that material new evidence, unavailable to the Commission or to Intervenors prior to the time for seeking rehearing or reconsideration, undermines the basis for the determination that incurring such nuclear plant costs is reasonable or prudent in light of the information available to Duke at the time and considering the other alternatives available to the utility for supplying its generation needs.

A fundamental premise of the Duke application and of the Commission's approval decision was the assertion that the chosen Westinghouse AP1000 reactor design embodied a standardized design which was subject to an accelerated US Nuclear Regulatory Commission licensing process. Such approved standard design

“should lead to a much higher level of predictability of project cost and schedule,” according to Duke witness Jamil, cited approvingly by the Commission. (Tr. Vol. 4, p. 381-382). Order, p. 17. While Mr. Jamil did acknowledge that such a cost and schedule assumption “has not yet been demonstrated,” *Id.*; neither Duke nor the Commission recognized on the evidentiary record the extent of actual design and schedule uncertainty associated with the chosen Westinghouse AP1000 reactor. The fuller extent of the AP1000 design and schedule uncertainty- with the associated reduced levels of project cost and schedule predictability have only recently been revealed.

A June 27, 2008, letter from Thomas Bergman, Deputy Director, USNRC Division of New Reactor Licensing, Office of New Reactors, to Robert Sisk of Westinghouse Electric, (Exhibit A, attached) states that due to Westinghouse’s June 3, 2008, withdrawal of significant AP1000 “design basis information” necessary for NRC design approvals, without submission of replacement supporting information, “there remains uncertainty about the schedule” for AP1000 design approval previously outlined by the NRC. The NRC now hopes to meet a goal of informing Westinghouse of a revised design review schedule by August 30, 2008. *Id.*

Insufficient information was provided to the NRC on various important technical issues related to the AP1000 and that lack of information had caused “uncertainty about the schedule” to persist. Thus, there exists no schedule now to finalize the AP1000 design and it is clear that the schedule continues to slip, thus impacting costs to Duke, interrupting scheduling of the project, and, most importantly, impacting rate payers who may well pay for the cost increases. Such cost increases, we must point out, make conservation, efficiency and alternatives all the more attractive.

It was incumbent upon Duke to fully explain to the Commission that no final design for the AP1000 existed and that the "certification" by the NRC in December 2005 did not, in fact, certify a final design. It is only via the June 27 letter from the NRC that we now see the great uncertainty associated with the design of the AP1000 and that any final design of it is years away, perhaps well into 2012.

Among the showings required of Duke under the Base Load Review Act for approval of this application is "information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant," S.C Code Section 58-33-225C(3); and "such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs." S.C Code Section 58-33-225C(4). Thus, the design of the plant selected, here the Westinghouse AP1000, and the prudence and reasonableness of that choice- in light of the alternatives- was required to be demonstrated "considering the information known to the utility at the time." The prudence and reasonableness of the Westinghouse AP1000 design selected in light of the design uncertainty reflected in this recent NRC communication as well as the information known to Duke regarding such uncertainty must now be reassessed. Additionally, the contract with Westinghouse to provide reactor components may well

be affected by the impending delays in the AP1000 design schedule. If the design is not finalized for several years, it is clear that there well could be contract impacts.

Since Duke sought and obtained approval to incur costs associated with “long-lead procurement items” among its preconstruction costs, further delays in the AP1000 design will impact not only the final costs of such items but may well impact the “preconstruction costs” of such items, including Reactor Coolant Pumps, Containment Vessel, Reactor Pressure Vessel, Steam Generators, Control Rod Mechanisms, and Condenser Circulating Water Piping. Order, pp. 7-8. These are the very components of the AP1000 Revision 16 design that have not been certified. Further, it is unknown if certain producers of long-lead time items can even begin production work until the design is finalized and approved. Now that more uncertainty has been injected into the AP1000 design and schedule, the costs for such long-lead procurement items will only increase and the ability to deliver such items will remain unknown. Thus, the decision by the Commission to approve incurring costs for long-lead time items, premised on an approved design, a predictable schedule, and a Duke estimate of some \$10 million, Order, p. 8, must now be revisited.

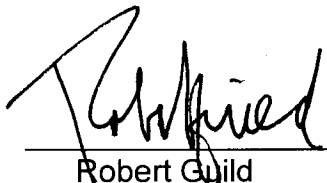
Given the chronic delays encountered to this point since the design was “certified” in 2005 and the current design delay now before us, it is very likely that yet more design delays will be encountered as the NRC’s AP1000 review process continues. It is incumbent upon the Commission to not tolerate such repeated and costly delays and Commission action at this point will make it clear to Duke that such a situation adversely affecting Duke rate payers is not acceptable

WHEREFORE, for the foregoing reasons, Intervenor, Friends of the Earth, respectfully requests that the Commission enter an order

1. rescinding Commission Order No. 2008-417, "Approving Application of Duke Energy Carolinas' Decision to Incur Nuclear Generation Pre-Construction Costs, dated June 9, 2008;

2, or, in the alternative, amending such order to reopen this proceeding to require Duke Energy to fully disclose to the public, the parties and the Commission all information known to it regarding the costs and schedule associated with the design, regulatory approvals and construction of the proposed William States Lee, III Nuclear Station prior to any further expenditures of pre-construction costs. Duke must be immediately required to produce detailed information on the AP1000 design, including the steps forward in finalizing the design, the schedule by which the design will be certified, the status of and impacts to the contract with Westinghouse and the identification of all remaining uncertainties.

July 24, 2008



Robert Guild
314 Pall Mall
Columbia, SC 29201
(803) 252-1419

ATTORNEY FOR FRIENDS OF THE EARTH

June 27, 2008

Mr. Robert Sisk, Manager
Licensing and Customer Interface
Regulatory Affairs and Standardization
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: REVIEW SCHEDULE FOR AP1000 REVISION 16 (DOCKET 52-006)

Dear Mr. Sisk:

Your letter of May 20, 2008, requested the U.S. Nuclear Regulatory Commission (NRC) to confirm that uncertainty in the review schedule for the AP1000 design certification amendment has been removed as a result of Westinghouse submittals on screen design/analysis and on bracketed Technical Specification items. These items were referred to in our February 15, 2008, letter establishing the review schedule. NRC agrees that the submittals identified in that letter were completed and submitted by Westinghouse on schedule. However, on June 3, 2008, you withdrew information that was necessary to address down-stream effects in the core. The information addressing down-stream effects in the core is an important consideration in addressing the overall debris generation and long-term recirculation cooling. The June 3, 2008, submittal withdrew design basis information and did not provide new supporting information to replace the withdrawn information. As the staff discussed with you, the information provided in your June 3, 2008, letter is insufficient. It is our understanding that you wish that we identify necessary additional information in the form of requests for additional information (RAIs). The staff is proceeding with that approach. Therefore, although the submittals have allowed the staff to begin review of these issues, uncertainty remains with respect to completion of the long-term cooling review.

In addition, there remains uncertainty about the schedule outlined in the February 15, 2008, letter in light of changes. This uncertainty is created as a result of changes in the scope of work of the review requested by Westinghouse since developing that schedule, and delayed submittals. The scope changes include:

- Change to Integrated Head Package design (to be submitted in June)
- Revision to 50.46 analyses (see February 15, 2008, letter from Westinghouse) (to be submitted in June)
- Revised analysis for containment external pressure (submitted on May 12, 2008 as RAI-TR9-08)
- Revised seismic analyses for rack design (TR44 and 54), and for critical sections (TR57) (to be submitted in June)
- Various impact reports (GLE series)

The delayed submittals include some revised Technical Reports or Request for Additional Information (RAI) responses that have been or are projected to be submitted later than originally planned. These changes alter the basis for the review schedule we originally formulated.

The staff understands that some changes in scope are necessary and may improve the design, and it is not our intent to discourage improvement in the design or analytical methods. We also understand that some submittals may need to be delayed for a variety of causes. Regardless, changes such as these do impact our planned reviews and affect ongoing reviews or require re-review of completed reviews. Given the current workload for all application reviews in the Office of New Reactors, introducing new work or delays in providing information as expected creates planning, scheduling and resource availability issues. As a consequence, the duration of your review may have to be extended in order to integrate new or delayed work into our work planning system. Assuming you provide the above information as committed, our goal is to inform you of changes to the schedule by August 30, 2008.

Sincerely,

/RA/

Thomas Bergman, Deputy Director
Division of New Reactor Licensing
Office of New Reactors